

REMARKS/ARGUMENTS

Currently in the case, after amendment, claims 1 - 52 are pending with claims 25-52 being withdrawn from consideration and claims 1 and 3-24 being rejected and claim 2 being objected to.

This Amendment responds to the aforementioned Office Action, wherein the claims as originally presented were rejected under Title 35 of United States Code, §§102 & 103. The Examiner's remarks have been carefully considered and, in view of the cited art, the claims which have amended to more particularly point out the distinctly claimed what Applicants regard as the subject matter of this present invention, it is sincerely believed that the claims which remain in the instant case patentably distinguish over all the prior art references. It is respectfully requested that this Application be re-examined in view of the following remarks, that the rejections be withdrawn, and that allowable subject matter be identified.

The points raised by the Examiner in the written office action will be responded to in the order they were discussed by the Examiner in the Office Action.

102 Rejections

In paragraphs 1 and 2, claims 1, 3, 6, 7, 9, 10, 11, 12, 14, 19, 20, 21, 23 & 24 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,638,769 to Lilja et al issued on

October 28, 2003 and entitled "Analysis Method and Cuvette Therefor". The invention of Lilja introduces a sample of whole blood into a micro-cuvette by a cavity, a hemolysing agent dissolved by the blood lyses the red blood cells and releases the cell's hemoglobins, then a first absorption measurement occurs at 490-520 nm with a second measurement to compensate for background interference. The reference is short on mechanical details but teaches the use of an absorption curve fit.

Claim 1 for example, (a) requires that the number of light sources or filters in the visible region of the electromagnetic spectrum be less than or equal to the number of hemoglobin derivatives to be measured, and (b) a microprocessor for determining the concentration of each hemoglobin derivative from the measured absorbance values. The Lilja et al reference is more concerned with a look-up table on absorption data, and doing the same lookup twice to overcome noise problems. The Lilja et al reference is an improper basis for rejection of the apparatus claim 1 as the elements of the claim are not contained within the four corners of the reference in a meaningful way. The Lilja et al reference alludes to other references and generally describes light absorption, but does not disclose all of the elements and limitations of claim 1, especially as outlined above. Therefore, it is believed that claims 1, 3, 6, 7, 9, 10, 11, 12, 14, 19, 20, 21, 23 & 24 are properly in condition for allowance with

regard to the Lilja et al reference.

Next, in paragraph 3, claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 11, 14, 19, 20, 21, 23 & 24 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,379,969 to Mauze et al, entitled "Optical Sensor for Sensing Multiple Analytes" which issued on April 30, 2002. This device is shown in block schematic style and is supposed to have the ability to provide "one stop analysis" by using multiple sensors and also claims to have a method to remove the effect of analytes which interfere with a particular sensor without segregating the analyte. However, the specifics on how to stop interference are not fully set forth and the disclosure seems to be an invitation to experiment to determine the mechanism of such exclusion of interference effects.

Mauze et al does not disclose (a) a housing, (b) a holder for the blood sample contained within the housing. Mauze et al makes an invitation to provide one-stop analysis by mentioning multiple numbers and aspects of measurement analysis, but is unconcerned with the integrated nature of the device shown by applicant, and thus the portability, ease of use, and other advantages taught by applicant. Thus Mauze et al does not disclose the aspects of claim 1 and of the other claims 3, 4, 6, 7, 9, 10, 11, 12, 11, 14, 19, 20, 21, 23 & 24 within the reference and thus claims 1, 3, 4, 6, 7, 9, 10, 11, 12, 11, 14,

19, 20, 21, 23 & 24 are believed to be in condition for allowance.

Next, in paragraph 4, claims 1, 3, 4, 5, 7, 9, 13, 14, 15, 19, 20, 21, 23 & 24 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,567,869 to Hauch et al, entitled "Method and Apparatus for Quantitation of Relevant Blood Parameters" which issued on October 22, 1996. This device is describes a very narrow cuvette which is illuminated by a light source with no mention of multiple wavelengths. The mention of more than one light source is not taken further and presumably relate to either back up sources of light or to providing different angles for sample illumination.

Since Hauch et al does not mention the limitations in claim 1, including:

(a) requires that the number of light sources or filters in the visible region of the electromagnetic spectrum be less than or equal to the number of hemoglobin derivatives to be measured, and
(b) a microprocessor for determining the concentration of each hemoglobin derivative from the measured absorbance values, claim 1, and claims dependent thereon are believed to be in condition for allowance.

103 Rejections

In paragraphs 5 and 6, Under the section headed "Claim Rejections - 35 USC §103", the Examiner rejected claim 13 under 35 U.S.C. §103(a) as unpatentable over Mauze in view of Hauch. The Examiner states that Hauch teaching that reflectance is measured the sensor is placed so that it would receive no light directly from the light source and that Mauze could be modified by arranging the light receiving detectors to lie in the same plane so that the device would be better able to measure the sample reflectance.

Applicant traverses this holding as it is clear that a limitation of being in the same plane (substantially) is narrower than being place so as to not "view" the light source. By example, one configuration could involve bathing the sample with multiple light sources, and then placing the detector spaced rearwardly in a tube aimed at the sample. Conversely, the light source could be placed back in a tube, and the detector could have a size and orientation and be placed widely near the sample. Placing both in the same plane is much narrower than "out of view".

Secondly by way of illustration only the placement of both the source and the detector in the same plane can have other advantages. For example, if it were important to have an equivalent number of wavelengths between the light source and

sample as between the sample and detector, same plane mounting gives further advantage. Other advantages may or may not be apparent, but are so much narrower than "out of view" and offer so many more advantages than mentioned here, that it is clear that such an arrangement is non-obvious and that claim 13 is properly in condition for allowance.

In paragraph 7, the Examiner rejected claim 22 under 35 U.S.C. §103(a) as unpatentable over Hauch in view of U.S. Patent No. 4,003,662 entitled "Portable Photometer". The Examiner states that Retzer teaches a battery powered device. However, claim 22 is believed to be allowable based upon dependence from claim 1, and an indication of such is solicited.

In conformance with the indication of "objected to" status of claim 2, claim 2 has been amended to independent form in accord with the Examiner's indications.

Attorney for applicant notes the lack of any indication of acceptability of the drawings as filed. Inasmuch as the objections in the Office Action actually related to typographical errors in the specification, and since no objection to the drawings were received, Attorney for Applicant assumes that the drawings are currently in an acceptable formal condition for acceptance as formal drawings to be published with the case.

The rejections under §§112, 102, & 103 having been explained, met and overcome, claims 1 - 24 are currently in

condition for allowance, and an indication of such is respectfully solicited.

The Examiner is invited to telephone Applicant's Attorney at the number below between the hours of 1:00 p.m. and 6:00 p.m. Eastern Standard Time, if such will advance this case.

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